

Post Office Box 1680, GPO  
Brooklyn, NY 11202

Date: SEP 25 1989

Person to Contact:

Contact Telephone Number:

Refer Reply to:

CERTIFIED MAIL

Dear Applicant:

We have considered your application for recognition of exemption under section 501(c)(4) of the Internal Revenue Code.

The information presented indicates that you were organized on [REDACTED] in the [REDACTED] by the adoption of your By-Laws. Your purposes and activities as stated in your application are "... the management and maintenance of the Condominiums located on [REDACTED]. Such activities specifically include maintaining the gardens, common areas, parking areas, hallways and any other area which is shared by the Condominium Owners." Its income is from assessments of the unit owners and its disbursements are for normal operating expenses.

The By Laws of the organization, Article I section 2, define..." the term "Condominium" as used herein shall include the land and all building and improvements thereon including the Condominium Units (herein after referred to as "Units"), and the common elements and the use and occupancy thereof."

The common elements include exterior walls, road and roof members, pipes, wires, conduits and public utility lines located underground or overhead of any irrevocably restricted common element, all yard and grass areas, front entrance doors, and the fencing, if any, installed by the sponsor around the perimeter of the property and around portions of various parking areas.

Section 501(c)(4) of the Internal Revenue Code provides for the exemption from Federal income tax of civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare.

The concept of social welfare implies a service or program directed at benefitting the community rather than a private group of individuals.

In *Commissioner v. Lake Forest, Inc.*, 305 F. 2d 814 (4th Cir. 1962), the court held that a cooperative housing corporation was not exempt as a social welfare organization under section 501(c)(4) of the Code since its activities were of the nature of an economic and private cooperative undertaking.

Rev. Rul. 69-280, 1969-1 C.B. 152, holds that a nonprofit organization formed to provide maintenance of exterior walls and roofs of members' homes in a development is not exempt from Federal income tax under section 501(c)(4) of the Code.

Revenue Rule 74-17, 1974-1 C.B. 130, holds that an organization formed by the unit owners of a condominium housing project to provide for the management, maintenance, and care of the common areas of the projects, as defined by State Statute, with membership assessments paid by the unit owners does not qualify for exemption under section 501(c)(4) of the Code.

By virtue of the essential nature and structure of a condominium system of ownership, the rights, duties, privileges, and immunities of the members of an association of unit owners in a condominium property derive from, and are established by, statutory and contractual provisions and are inextricably and compulsorily tied to the owner's acquisition and enjoyment of his property in the condominium. In addition, condominium ownership necessarily involves ownership in common by all condominium unit owners of a great many so-called common areas, the maintenance and care of which necessarily constitutes the provision of private benefits for the unit owners.

Since the organization's activities are for the private benefit of its members, it cannot be said to be operated exclusively for the promotion of social welfare. Accordingly, it does not qualify for exemption from Federal income tax under section 501(c)(4) of the Code.

It appears that your organization may elect to file under section 528 to receive certain tax benefits which, in effect, permit the exclusion of exempt function income from gross income. The election to file under section 528 is to be made by filing Form 1120-H, U.S. Income Tax Return for Homeowners Associations. However, if you do not elect to file under section 528, you are required to file Federal income tax returns on Form 1120.

Accordingly, we conclude that you do not meet the requirements for exempt status under section 501(c)(4) of the Code and propose to deny your request for exemption under that section.

We have also determined that you fail to qualify for exempt status under any other subsection of IRC 501(c).

You are required to file a taxable return Form 1120 or 1041 with the District Director of Internal Revenue Service. Please send the return to the Internal Revenue Service, P.O. Box 1680, General Post Office, Brooklyn, NY 11202.

If you do not agree with this determination, you may request a Conference with the Regional Director of Appeals by protesting in accordance with the enclosed instructions within 30 days.

Protests submitted which do not contain all the documentation stated in the instructions will be returned for completion.

If we do not hear from you within that time, this determination will become final.

Sincerely yours,

A solid black rectangular box used to redact the signature of the District Director.

District Director

Enclosure: Publication 892